

## **REMARKS**

In the Office Action dated August 9, 2007, pending claims 1, 2, 4-6, 8, 9, 12-14 16, 19, 21, 22, and 26-31 stand rejected. Applicant appreciates the Patent Office's indication that claims 28-30 are allowed and that claims 6, 8, 13, 19, 22, 26, and 27 would be allowable if rewritten in independent form.

Claim 21 has been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for insufficient antecedent basis. Claims 1 and 2 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,953,287 to Werner ("Werner"). Claims 1, 2, 4, 5, 9, 14, 16, 21, and 31 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,439,151 to Clayton ("Clayton"). Claims 1, 2, 4, and 12 are rejected under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent No. 6,471,104 to Janek ("Janek").

### **The 35 U.S.C. § 112, Second Paragraph Rejection of Claim 21**

Applicant has amended claim 21 to correct the antecedent basis for "a platform mounting aperture." Applicant respectfully requests that Examiner withdraw the 35 U.S.C. § 112 rejection of claims 21 in light of the amendment to the claim.

### **The 35 U.S.C. § 102(b) Rejections of Claim 1 and 2 as Anticipated by Werner**

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP 2131 (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987)). Applicant respectfully submits that Werner does not disclose each and every element recited in claim 1. Independent claim 1 has been amended to include the limitations of the platform including a

shoulder member and the latch or lock including a catch member to engage the shoulder member. The latch of Werner identified by Examiner (reference number 55) does not include a catch member as recited in amended claim 1. Werner describes reference number 55 as “two spaced fingers.” Col. 3, line 29. In addition, the platform of Werner (reference number 40) does not include a shoulder member as recited in amended claim 1. Applicant submits that amended claim 1 patentably distinguishes over Werner. In light of the amendment to claim 1, Applicant respectfully requests that Examiner withdraw the 35 U.S.C. § 102 rejection of claim 1 as anticipated by Werner. Since claim 2 depends directly upon independent claim 1, Applicant respectfully requests that Examiner also withdraw the 35 U.S.C. § 102 rejection of claim 2 as anticipated by Werner.

**The 35 U.S.C. § 102(b) Rejections of Claims 1,2, 4, 5, 9, 14, 16, 21, and 31 as Anticipated by Clayton**

**Independent claims 1 and 14**

Applicant respectfully submits that Clayton do not disclose each and every element recited in claims 1 and 14. Specifically, Clayton does not disclose the limitations of “a container side wall extending upwardly from a periphery of said bottom,” “a platform side wall extending upwardly from a periphery of said floor,” or “said floor and platform side wall defining a receiver portion adapted to nestingly support the cargo container.” Each of these three limitations is recited in both independent claims 1 and 14.

Examiner cites reference number 58 as disclosing the bottom of the cargo carrier and reference numbers 60, 68, and 70 as disclosing the side walls of the cargo carrier. As seen in Figures 7 of Clayton, side walls 60, 68, and 70 do not contact the bottom 58; therefore, the side

walls of Clayton do not extend upwardly from a periphery of the bottom as is recited in both independent claims 1 and 14.

Examiner cites Clayton as disclosing a platform with a floor 28 and a side wall extending upward from the periphery of the floor defining a receiver portion adapted to nestingly support the cargo container. Clayton discloses a frame (14) formed by a generally u-shaped tube (26) and a straight tube (28), where the container rests on top of the frame. *See* Clayton col. 3, lines 50-52; col. 4, lines 14-31; Figure 1. There are no platform side walls at all disclosed in Clayton, and thus there are no side walls disclosed in Clayton that extend “upwardly from a periphery of said floor” as recited in claims 1 and 14.

In addition, Clayton does not disclose a “floor and platform side wall defining a receiver portion adapted to nestingly support the cargo container” as recited in claim 1. As previously discussed, there are no platform side walls at all disclosed in Clayton. Nothing in Clayton discloses the structure of a receiver portion or a receiver portion adapted to nestingly support the cargo container as recited in claim 1 and 14. The frame (14) simply provides a frame with no side walls.

Based on the arguments presented above, Applicant submits that claims 1 and 14 patentably distinguish over Clayton, and Applicant respectfully requests that Examiner withdraw the 35 U.S.C. § 102 rejections of claims 1 and 14 as anticipated by Clayton.

Dependent claims 2, 4, 5, 9, 16, 21, and 31

Dependent claims 2, 4, 5, 9, 16, 21, and 31 all directly or indirectly depend from and add additional limitations to either claims 1 and 14. As Applicant has provided remarks distinguishing claims 1 and 14 from Clayton, Applicant respectfully requests that Examiner also

withdraw the 35 U.S.C. § 102 rejections of claims 2, 4, 5, 9, 16, 21, and 31 as anticipated by Clayton.

**The 35 U.S.C. § 102(b) Rejections of Claims 1, 2, 4, and 12 as Anticipated by Janek**

Applicant respectfully submits that Janek does not disclose each and every element recited in independent claim 1. Specifically, Janek does not disclose the limitations of “a platform side wall extending upwardly from a periphery of said floor,” or “said floor and platform side wall defining a receiver portion adapted to nestingly support the cargo container.”

Examiner cites Janek as disclosing a platform with a the floor 32 and a side wall 54 extending upward from the floor defining a receiver portion adapted to nestingly support the cargo container. Janek discloses an L-shaped support beam (L<sup>1</sup>) comprised of struts (32, 33) that are preferably 2 inches by 2 inches in cross-section. *See* Janek col. 4, lines 66-67; col. 7, lines 56-57; Figures 2-3. Janek further discloses element 54 as a tubular post that is a component of an optional accessory support beam 50 of arbitrary construction. *See* col. 4, lines 61-64; col. 8, lines 1-2. The disclosure of a strut (32) and an optional tubular post (54) does not disclose the element of “a platform side wall extending upwardly from a periphery of said floor” as recited in claim 1. The strut (32) does not serve as a floor nor does the post (54) serve as a side wall. Moreover, the combination of the strut (32) and post (54) does not serve as a “receiver portion adapted to nestingly support the cargo container.” The strut (32) is disclosed as having a preferable width of two inches with no other broadening description or illustration. A strut with a two inch width is not a “floor” as recited in claim 1. The post (54) is illustrated as having approximately the same two inch width as the strut (32). A post with a two inch width is not a “side wall” as recited in

claim 1. The combination of such a strut and post does not provide the structure needed to form a receiver portion or a receiver portion that nestingly supports the cargo container.

Janek's description of the method of loading a tub (41) on to the strut (32) also informs the disclosure. Janek states:

The manner in which the wheels 44 are fixedly attached to the tub 41 is not critical but for optimum adjustability, namely to minimize the vertical distance through which the tub is to be pivoted onto the longitudinal strut 32, it is preferred to use telescopicable wheels. At its other end, the tub 41 is provided with a handle 45 with which sufficient force is applied to rotate the container in a vertical plane at right angles to the longitudinal axis, onto the support beam.

Janek col. 5, lines 59-67. From this disclosure, the strut (32) and post (54) do not serve as a receiver portion for nestingly supporting the cargo container. The cited loading method actually teaches away from a receiving portion in that the method of loading the container relies on tilting the container onto the strut (32) and pivoting the container about the strut (32). The loading method in Janek relies on a thin strut about which the tilted container may be rotated. A platform wall extending upward from the floor would make such a loading method more difficult and may inhibit such a loading method.

Based on the arguments presented above, Applicant submits that independent claim 1 patentably distinguish over Janek, and Applicant respectfully requests that Examiner withdraw the 35 U.S.C. § 102 rejections of claim 1 as anticipated by Janek.

#### Dependent claims 2, 4, and 12

Dependent claims 2, 4, and 12 all directly or indirectly depend from and add additional limitations to claim 1. As Applicant has provided remarks distinguishing claim 1 from Janek, Applicant respectfully requests that Examiner also withdraw the 35 U.S.C. § 102 rejections of claims 2, 4, and 12 as anticipated by Janek.

### Conclusion

In light of the above amendments and remarks, Applicant submits that claims 1, 2, 4-6, 8, 9, 12-14, 16, 19, 21, 22, and 26-31 of the present application are now in condition for allowance and respectfully requests allowance of these pending claims. Should the Examiner have any questions pertaining to the above, undersigned Counsel would welcome a phone call to provide any further clarification.

Respectfully submitted,



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